

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARIE T. McKENDRY and U.S. POSTAL SERVICE,
POST OFFICE, Chicopee, Mass.

*Docket No. 96-2031; Submitted on the Record;
Issued September 28, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant has met her burden of proof in establishing that she developed an emotional condition as a consequence of her February 1, 1994 employment injury.

On February 1, 1994 appellant, then a 42-year-old clerk/finance station, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that she injured her right hip when she slipped and fell on an uncleared walk directly in front of the post office.¹ The Office of Workers' Compensation Programs accepted the claim on April 22, 1994 for low back strain and right hip contusion (claim number A01-316489).

On April 21, 1994 appellant filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that her stress was due to factors of her employment.² Appellant alleges that her stress is due to the employing establishment failing to adhere to the physical limitations imposed by her back injury, harassment or comments made regarding her work restrictions by coworkers and her reaction to the pain from her injury. Appellant specifically stated that when she reported to work on April 4, 1994 her supervisor stated she was to report to center station. Appellant states she informed her supervisor that the morning duties at center station were outside her work restrictions. Appellant returned to work on April 11, 1994 and stated she became stressed when her supervisor or union representative came near her work area. Appellant also alleged that she became stressed because her supervisor passed her over for overtime work.

In a letter dated May 31, 1994, Dr. Arthur Gendron, a Board-certified family physician, noted he had seen appellant on April 15, 1994 for her complaint of "stress at work for two

¹ The record numbered 1-84 will be denoted as "R," the record numbered 1-273 will be denoted as "A" and the record numbered 1-179 will be denoted as "B."

² This was noted as claim A1-316489

months.” He noted that appellant informed him that she had been given “orders beyond light duty” which she followed and reinjured herself. He then wrote a note stating that appellant was totally disabled from April 15 through April 22, 1994 and referred her to counseling. Dr. Gendron also noted a prior history of anxiety and depression.

By letter dated July 21, 1994 the Office of Workers’ Compensation Programs requested appellant to submit additional information. The Office advised appellant to submit statements from individuals to verify her statements and medical evidence.

In a letter dated August 19, 1994, appellant responded to the Office’s request. Appellant reiterated she was stressed due to “the effects of harassment and humiliation suffered at the hand of my supervisors in connection with my limited duty from April 4 [through] June 27, 1994.” Appellant stated that the only recent hospitalization was for an emotional condition due to her stress claim.

On September 13, 1994 the Office informed appellant that additional information was required to process her recurrence claims and advised her to submit a medical report from her treating physician. The Office also noted the type of nonmedical information that was required.

By decision dated September 13, 1994, the Office denied appellant’s claim for an emotional condition on the basis that the evidence did not establish fact of injury. The Office accepted that the claimed events occurred, but that the medical opinion evidence failed to support that a medical condition resulting from the trauma occurred. The Office noted that the record contained no medical evidence from psychiatrists or clinical psychologists, that no diagnosis of emotional condition and no rationalized medical opinion linking appellant’s federal employment with her disability.

In a letter dated October 11, 1994, appellant’s counsel requested an oral hearing and reconsideration of the denial of her claim.

In a report dated October 12, 1994, Dr. Ronald N. Paasch, a Board-certified physiatrist, noted the history of appellant’s February 1, 1994 employment injury, appellant’s work history and treatment. Dr. Paasch opined that appellant’s injuries are causally related to her accepted February 1, 1994 employment injury. Dr. Paasch also opined that appellant’s “onset of major depression followed from work-related incidents subsequent to her ability to return to work at this time.”

In a report dated May 1, 1995, Dr. David B. Levit, a licensed clinical psychologist, provided a history of appellant’s condition and noted that he had been treating appellant since May 3, 1994. Dr. Levit provided the results of the psychological testing and diagnosed major depressive disorder. Dr. Levit noted that throughout appellant’s treatment that:

“she was preoccupied by feelings of anger and distress regarding an incident, as she reported it, during which she reinjured her back because she followed the instructions of a supervisor at work to perform a physical task which was contrary to her physician’s orders. She felt a sense of betrayal by the supervisor and was greatly upset by this.”

Dr. Levit opined that appellant's "pain condition has contributed significantly as a precipitant to the psychiatric conditions for which she sought treatment." Dr. Levit also attributed appellant's "feelings of betrayal and upset regarding the reported incident with the supervisor" as aggravating her psychiatric condition.

On July 12, 1995 appellant, then a 44-year-old clerk/finance station, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1)³ alleging that she injured her lower back, center to right side and back of right leg when she leaned forward to pick up a handful of flats. The Office assigned the case file number A1-330799. The Office accepted the claim for low back strain on September 20, 1995.

A hearing was held on April 17, 1995 at which appellant was represented by counsel and allowed to submit evidence and testify.

In a decision dated June 14, 1995, the hearing representative affirmed the Office's September 13, 1994 denial of her claim for an emotional condition, but remanded the case for a further action regarding appellant's orthopedic problem. Regarding appellant's emotional condition, the hearing representative found that appellant did not provide any proof that her supervisor forced her to work outside of her injury-imposed restrictions. The hearing representative also found that the record contained no supporting evidence that her coworkers harassed her or made comments regarding her work restrictions. Lastly, the hearing representative found Dr. Levit's report unrationalized regarding appellant's reaction to her pain from her back injury, and, thus insufficient to establish that she suffered an emotional condition.

The Board finds that appellant has not met her burden of proof in establishing that she developed an emotional condition as a consequence of her February 1, 1994 employment injury.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular- or specially-assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁴ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction in force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁵

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or

³ Appellant had originally filed a notice of recurrence of disability (Form CA-2a) on July 12, 1995. Appellant, in a letter dated July 18, 1995, rescinded her claim for a recurrence of disability and filed a CA-1 form because she believed she has sustained a new injury and not a recurrence of disability.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ See *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 38 ECAB 125 (1976);

adversely affected by employment factors.⁶ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁷

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁸ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁹

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegation that her supervisor did not schedule her for overtime, the Board has held that such matters as sick leave, overtime and fitness-for-duty examinations are generally not considered compensable factors of employment because they relate to the administrative duties of the employer, rather than the regular duties of the employee.¹⁰ An administrative or personnel matter will not be considered a compensable factor of employment unless there is evidence of error or abuse by the employing establishment.¹¹ The record contains no evidence of any error or abuse by the employing establishment in not providing appellant with overtime work.

Appellant has also alleged that general harassment and discrimination in work assignments on the part of her supervisors contributed to her claimed emotional condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.¹² However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that

⁶ *Pamela Rice*, 38 ECAB 838, 841 (1987).

⁷ *Effie O. Morris*, 44 ECAB 470-74 (1993).

⁸ *See Margaret S. Krycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁹ *Id.*

¹⁰ *See Frederick D. Richardson*, 45 ECAB 454 (1994); *Michael Thomas Plante*, 44 ECAB 510 (1993).

¹¹ *Richard J. Dube*, 42 ECAB 916 (1991).

¹² *David W. Shirey*, 42 ECAB 783, 795-796 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹³ In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors or coworkers.¹⁴ Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding appellant's allegation that she was asked to perform work outside of her physical restrictions, the Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if such activity was substantiated by the record.¹⁵ However, in this case, there is insufficient evidence that appellant was asked to perform work exceeding her physical restrictions. Therefore, this factor is not deemed a compensable factor of employment.

Appellant has alleged that she sustained stress due to her pain from prior employment-related injuries. The Board has held that an emotional condition related to chronic pain and limitations resulting from an employment injury is covered under the Act.¹⁶ The record indicates that, prior to the filing of the present emotional claim, appellant sustained an employment-related injury or injuries for which she sought continuing treatment and, therefore she has identified a compensable factor of employment in this regard.

In the present case, appellant has identified a compensable factor of employment with respect to her stress due to her employment-related pain. However, appellant's burden of proof is not discharged by the fact that she has established an employment factor which may give rise to a compensable disability under the Act. To establish his occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.¹⁷

Appellant submitted a report dated October 19, 1993 from Dr. Levit, a licensed clinical psychologist, who provided a history of appellant's condition and diagnosed major depressive disorder. Dr. Levit stated that appellant's "pain condition has contributed significantly as a precipitant to the psychiatric conditions for which she sought treatment" which was aggravated by her "feelings of betrayal and upset regarding the reported incident with the supervisor." Dr. Levit has not provided any rationalized medical opinion as to the cause of appellant's pain condition. Therefore, this medical report is insufficient to establish that appellant sustained an emotional condition causally related to a compensable factor of her employment.

¹³ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁴ *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁵ *Diane C. Bernard*, 45 ECAB 223 (1993).

¹⁶ See *Arnold A. Alley*, 44 ECAB 912 (1993); *Charles J. Jenkins*, 40 ECAB 362, 367 (1988).

¹⁷ See *William P. George*, 43 ECAB 1159, 1168 (1992).

The decision of the Office of Workers' Compensation Programs dated June 14, 1995 is hereby affirmed.

Dated, Washington, D.C.
September 28, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member